

**RULES  
OF  
TENNESSEE HUMAN RIGHTS COMMISSION**

**CHAPTER 1500-1  
RULES FOR ACTING UPON COMPLAINTS OF DISCRIMINATION**

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**1500-1-.01 PURPOSE.**

The purpose of the following rules is to establish a uniform system for the administration and handling of complaints of discrimination made to the Commission. The rules establish directory guidelines for the Commission, the Commission's staff, employers, housing providers, and persons owning or operating places of public accommodation, resort or amusement in acting on and responding to complaints; they are not to be construed as limiting the rule of the Commission in other areas.

**Authority:** T.C.A. §4-21-202. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 18, 2003; effective October 28, 2003.

**1500-1-.02 PRACTICE AND PROCEDURE.**

- (1) Nature of discriminatory practice notices and who must post. Every employer, employment agency, labor organization, and housing opportunity provider subject to Tennessee Code Annotated, Title 4, Chapter 21, hereinafter referred to sometimes as the Tennessee Human Rights Act, shall post and maintain at their establishments fair employment practice notices and/or fair housing practice notices furnished by the Tennessee Human Rights Commission indicating the substantive provisions of the Tennessee Human Rights Act, where complaints may be filed, and such other information as the Tennessee Human Rights Commission deems pertinent. Employers with one or more Spanish-speaking employees shall also post such notices in Spanish.
- (2) Where employers, employment agencies, and housing opportunity providers must post. With respect to employers and employment agencies, such notices must be posted conspicuously in easily accessible areas frequented by employees and applicants for employment, and at or near each location where the employees' services are performed. With respect to housing opportunity providers, such notices must be posted conspicuously in areas frequented by residents and individuals seeking housing opportunities.
- (3) Where labor organizations must post. With respect to labor organizations, such notices must be posted conspicuously in easily accessible and well-lighted places customarily frequented by members and applicants for membership.
- (4) Definitions. When used in this regulation:
  - (a) "Act" shall mean the Tennessee Human Rights Act, Tennessee Code Annotated, Title 4, Chapter 21.
  - (b) "Person" includes one (1) or more individuals, governments, governmental agencies, public authorities, labor organizations, corporations, legal representatives, partnerships, associations,

(Rule 1500-1-.02, continued)

trustees, trustees in bankruptcy, receivers, mutual companies, joint stock companies, trusts, unincorporated organizations or other organized groups of persons.

- (c) “Commission” means the Tennessee Human Rights Commission.
- (d) “Hearing examiner” is one (1) or more persons or commissioners, designated by the commissioners to conduct a hearing. The commissioners have the sole power to determine the qualifications of the hearing examiner.
- (e) “Discriminatory Practices” means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, creed, color, religion, sex, age or national origin.
- (f) “Employer” includes the state, or any political or civil subdivision thereof, and persons employing eight (8) or more persons within the state, or any person acting as an agent of an employer, directly or indirectly.
- (g) “Employment agency” includes any person or agency, public or private, regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes any person.
- (h) “Labor organization” includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment or any agent acting for such organizations.
- (i) “Places of public accommodation, resort or amusement” includes any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public, or which is supported directly or indirectly by government funds, except that:
  - 1. A bona fide private club is not a place of public accommodation, resort or amusement if its policies are determined solely by its members; and
  - 2. Its facilities or services are available only to its members and their bona fide guests.
- (j) “Chairman” shall mean the duly elected Chairman of the Tennessee Human Rights Commission or, in the event of his or her absence, or inability to act, the Vice-chairman, who has been designated by the Commission, or if such Vice-chairman is unable to act, a Commissioner designated by the Commissioners.
- (k) “Housing opportunity provider” shall include, but is not limited to, a real estate broker, affiliate broker, real estate operator, landlord, and any agent of such provider. “Housing opportunity provider” shall also include, but is not limited to, insurers and financial institutions, and any agent thereof, to the extent that such entities provide insurance or financing to persons seeking housing opportunities.
- (l) “Investigator” shall mean a Commissioner appointed by the Chairman, a member of the Commission staff designated by the Executive Director, or an approved contractor designated by the Executive Director, empowered to investigate the allegations of the complaint and to determine whether there is sufficient evidence to substantiate those allegations.
- (m) “Complainant” shall mean the person by whom or on whose behalf a complaint is filed.

(Rule 1500-1-.02, continued)

- (n) “Respondent” shall mean the person, employer, employment agency, labor organization, housing opportunity provider, or place of public accommodation against whom a complaint is filed.
  - (o) “Religion” shall mean all aspects of religious observation and practice, as well as belief.
  - (p) “Executive Director” shall mean the individual appointed by the Commissioners as the administrative head of the Commission. The Executive Director shall be empowered with the authority to appoint the necessary professional, technical, and clerical staff, which shall be covered by and subject to the provisions of the rules and regulations, to carry out the provisions of the Act and these rules. Any powers vested in the Executive Director, and any duties imposed upon him or her by the Act or these rules and regulations, may be exercised or discharged by the Executive Director or the Executive Director’s designee in his or her absence. In the event the Executive Director becomes incapacitated to the extent that he or she can no longer perform his or her duties, such duties may be performed by the Assistant Director, or, in the absence of the Assistant Director, a designee selected by the Executive Director.
  - (q) “Verified” shall mean sworn to or affirmed before a notary public, designated representative of the Commission, or other person duly authorized by law to administer oaths and take acknowledgements, or supported by a declaration in writing under penalty of perjury.
- (5) Complaint. Who may file:
- (a) Any individual claiming to be aggrieved by a discriminatory practice or about to be injured by a discriminatory practice, may, individually, or through his or her authorized representative, make, sign, and file with the Commission a written sworn complaint. Assistance in drafting and filing complaints, including language interpretation, shall be available to complainants at the Commission’s offices or from any Commission staff member who has been duly authorized to do so by the Executive Director.
  - (b) A Commissioner may, in like manner, make and file such a complaint.
  - (c) Upon receiving a complaint submitted by the Federal Equal Employment Opportunity Commission (EEOC) or the U.S. Department of Housing and Urban Development (HUD), the Executive Director, or his or her representative, acting in the name of the Commission, may issue a sworn complaint in writing and attach thereto the materials, if any, submitted by the Federal government.
- (6) Complaint Form. The complaint shall be in writing and shall be verified. The Commission shall make available to the public a standardized complaint form upon request. Notary public service shall be furnished without charge by the Commission. The complaint shall contain the following:
- (a) The full name and address of the complainant.
  - (b) The name and address of the person, employer, labor organization, employment agency, government agency, place of public accommodation, or housing opportunity provider against whom the complaint is made.
  - (c) A short and plain statement of the claim showing that the complainant is entitled to relief under the Tennessee Human Rights Act.
  - (d) The dates and times of the alleged discriminatory practice, if known, and, if the alleged discriminatory practice is of a continuing nature, the dates between which those continuing acts of discrimination are alleged to have occurred, if known.

(Rule 1500-1-.02, continued)

- (e) A statement as to whether any action, civil or criminal, instituted by the complainant in any other forum, based upon the same grievance as is alleged in the complaint, has been instituted, together with a statement as to the status or disposition of such other action.
- (7) Time of filing complaint. A complaint alleging discrimination must be filed within 180 days after the alleged discriminatory practice occurs. If the alleged discriminatory practice is of a continuing nature, the date of occurrence is the date of the last discriminatory act, or the date of which the complaint shall have been filed if the discriminatory practice continues.
- (8) Place of filing complaint. A complaint may be filed with the Commission at any of the Commission's offices, or at any other office designated by the Commission.
- (9) Manner of filing complaint. A complaint may be filed by personal delivery, express delivery, ordinary mail, registered mail, certified mail, or electronic facsimile. The original copy of a complaint filed by electronic facsimile shall be physically delivered to the Commission within ten (10) business days of electronic transmission.
- (10) Amendment of complaint. The Commission, the presiding hearing examiner, or the complainant may reasonably and fairly amend a complaint, subject to the following limitations:
  - (a) The power to amend a complaint may be exercised before the issuance of a notice of hearing by the Commission's staff with the consent of the complainant, and after the issuance of a notice of hearing by the presiding hearing examiner with the consent of the complainant.
  - (b) The power to amend a complaint may be exercised before the issuance of a notice of hearing by the complainant as a matter of right, and after the issuance of a notice of hearing at the discretion of the presiding hearing examiner if he or she determines such amendment serves the interest of justice.
  - (c) A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.
- (11) Substitution and Addition of Parties.
  - (a) A complaint may be amended by the complainant to substitute or name additional parties as respondent(s) if such parties are successors or assigns of a named respondent. Mere misnomer of a party, however, shall not be grounds for dismissal and may be cured at any time by amendment of the complaint. A person may be added as party respondent, even if that person is not a successor or an assigns of the named respondent, if the following terms and conditions are met:
    - 1. The complaint in the case was filed within 180 days of the date of the discriminatory practice allegedly committed by the person sought to be added as a party respondent;
    - 2. The failure to join the person as a party respondent was inadvertent;
    - 3. The person sought to be added as a party respondent was given notice of the filing of the complaint at the time the original complaint was filed;
    - 4. The nature of the original complaint was such that the person sought to be added knew, within the 180 day period, that the complaint grew out of a transaction or occurrence involving or concerning him or her;

(Rule 1500-1-.02, continued)

5. The addition of the person sought to be named as a party respondent does not raise new factual questions which were not considered by the Commission in its investigation; and
  6. The cause of action alleged against the person sought to be made a party respondent in the case arises out of the same transaction or occurrence set out in the original complaint.
- (b) If a party to a complaint dies, the proper party or parties may be substituted upon motion to the Commission. If a motion to substitute is not filed within ninety (90) days after the death is suggested of record, the complaint may be dismissed as to the deceased party.
  - (c) No party shall be added as a party respondent except as provided in this section.
- (12) Postponement of Hearing Date. If a complaint is amended, a hearing date postponement may be granted to the respondent upon request to the Commission. In no event shall such hearing date be more than ten (10) days later than the original hearing date.
  - (13) Withdrawal of complaint. Upon the written request of the complainant or the complainant's representative, stating the reasons for such a request, a complaint, or any part thereof, may be withdrawn only on written consent of the Commission. Such withdrawal shall be without prejudice to the rights of the complainant. A withdrawn complaint may be re-filed, provided such filing occurs within 180 days of the discriminatory act originally alleged.
  - (14) Dismissal of complaint. The Commission, the Executive Director, or the Commissioners may dismiss a complaint at any time, for reasons including, but not limited to, lack of probable cause, lack of jurisdiction, or lack of complainant cooperation, whether upon the face of the complaint, after investigation, or after conference, conciliation and persuasion. If a complaint is dismissed, the Executive Director shall notify the parties by mail of such determination and of the complainant's right to apply to the Commission for reconsideration of such dismissal. In any dismissed case that is dual-filed with either the EEOC or HUD, the Commission shall refer the complaint to the appropriate federal agency for investigation. In housing cases in which the respondent claims an exemption under T.C.A. Section 4-21-602(a)(1) and (2) for property occupied by a family member, the Commission will forward such complaints to HUD for appropriate action.
  - (15) Reconsideration of complaint.
    - (a) The complainant, within thirty (30) days after receiving a copy of the order dismissing the complaint, may file with the Commission an application for reconsideration of the order. Such application must be in writing and must specifically state the grounds upon which it is based. Grounds for reconsideration shall include, but not be limited to, the production of new evidence; evidence not properly considered during the investigation; or evidence obtained from new witnesses.
    - (b) Upon receipt of an application for reconsideration, the Executive Director, a person appointed by the Executive Director, or a Commissioner shall reconsider the complaint. The Executive Director may designate a different investigator to initiate a new investigation of the complaint. The Chairman may designate a different Commissioner to direct a new investigation as chief investigator. If a new investigation is conducted, the investigator(s) may consider the evidence gathered in the initial investigation. The investigator(s) shall, within thirty (30) days, make a new determination of whether there is probable cause to believe that the respondent has engaged in a discriminatory practice.
    - (c) Dismissal of a complaint may be reconsidered by the Commission on its own initiative at any time within thirty (30) days after such dismissal. Notice of such reconsideration shall be provided by the Commission to all parties to the investigation.

(Rule 1500-1-.02, continued)

- (16) Affirmative action plans. An affirmative action plan filed with the Commission pursuant to Tennessee Code Annotated Section 4-21-406(b) and not approved in writing within ninety (90) days of its filing with the Commission shall be deemed to be disapproved by the Commission. The Commission shall publish and shall make available upon request guidelines for evaluating or developing such plans.

**Authority:** T.C.A. §§4-21-102, 4-21-202, 4-21-302, and 4-21-406. **Administrative History:** Original rule certified June 10, 1974. Amendment filed December 5, 1979; effective January 19, 1979. Amendment filed April 30, 1997; effective August 28, 1997. Amendment filed September 7, 2000; effective January 29, 2001. Amendment filed June 18, 2003; effective October 28, 2003. Notice of Withdrawal to paragraphs (4), (6), and (10) filed and effective September 24, 2003. Amendment filed November 19, 2003; effective March 29, 2004.

### **1500-1-.03 FILING OF REPORTS AND PRESERVATION OF RECORDS.**

- (1) Filing of Reports. The Commission may require employers, employment agencies, and labor organizations in the State of Tennessee subject to Tennessee Code Annotated, Title 4, Chapter 21, and/or subject to the Federal Civil Rights Act of 1964, 42 USC Section 2000(e) as amended, to file the appropriate standard employment information reports (i.e., Employer's Information Reports [EEO1]) to the offices designated by the Commission on an annual basis.
- (2) The Commission reserves the right to require reports about the employment practices of individual employers or groups of employers whenever such information has not been furnished to the Equal Employment Opportunity Commission or to the Tennessee Human Rights Commission as prescribed by the law and the rules and regulations of the two (2) Commissions. In connection with the investigation of a complaint, the Commission reserves the right to require an employer to provide such information that has not been received by the Commission or is information more than six (6) months out-of-date. Where the appropriate Equal Employment Opportunity form job categories or the appropriate THRC form job categories do not provide a breakdown descriptive of the employer's actual job categories, the Commission may require a more descriptive work force breakdown.
- (3) The provisions respecting confidentiality of information contained in Section 709(e) of the U.S. Civil Rights Act of 1964, T.C.A. Section 10-7-504, T.C.A. Section 4-21-303(d), 29 CFR Parts 1601.22 and 1601.26 shall be observed by all Commissioners and staff of the Tennessee Human Rights Commission.
  - (a) The Commission's complaint files, investigative files, and complaint record-keeping system shall be confidential, except that the Commission shall make the investigative file available to the charging party, the respondent, their attorneys, and any state or federal law enforcement agency seeking to enforce anti-discrimination statutes, upon reasonable request and after review. The identity of individuals interviewed as witnesses shall remain confidential except when the disclosure of their identity becomes necessary at the time of public hearing.
  - (b) Review and removal of confidential material from investigative files provided to parties or their attorneys shall be conducted or supervised by a Commission staff attorney and shall be conducted in a manner to protect the privacy of all involved parties and non-parties. Material to be removed shall include, but shall not be limited to, confidential witness information; intra-Commission notes, memoranda or other items which would reveal recommendations, impressions, strategy, or deliberative process relating to the investigation, settlement or litigation; credit reports; arrest and/or conviction records; and all attorney work product. All sensitive medical information and sensitive personnel file information concerning the charging party or others, provided by persons other than the party requesting the file and which is not relevant to the issues raised in the charge, shall be removed. Where such information concerning persons other than the charging party is relevant to the issues raised in the charge, names and other identifying information shall be deleted before disclosure in order to protect the persons' privacy.

(Rule 1500-1-.03, continued)

- (4) Any personnel or employment record made or kept by an employer (including, but not limited to, application forms submitted by applicants; other records having to do with hiring, promotion, demotion, transfer, layoff or termination; rates of pay or other terms of compensation; and selection for training or apprenticeship) shall be preserved by the employer for a period of six (6) months from the date of the making of the record or termination of an employee. The personnel records of an individual terminated shall be kept for a period of six (6) months from the date of the making of the record or termination of an employee. Where a complaint of discrimination has been filed, the respondent employer shall preserve all personnel records relevant to the complainant until final disposition of the complaint. The term "personnel records relevant to the complaint," includes, but is not limited to, personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant, as well as application forms or test papers completed by an unsuccessful applicant or by all other candidates for the same position as that for which the complainant applied and was rejected. The date of "final disposition of the complaint" means the date of the statutory period within which the complainant, the intervenor, or the Commission may bring an action in chancery or circuit court, or the date on which such litigation is terminated, whichever is later.
- (5) If a person fails to make, keep, or preserve records or make reports in accordance with these regulations, the Commission may seek an order requiring compliance from the chancery or circuit court.
- (6) The Commission may require all employers, labor unions, and employment agencies subject to the jurisdiction of the EEOC to file a duplicate of information furnished to EEOC with the Commission for whichever reporting interval required of them by EEOC.
- (7) Any record made or kept by a housing opportunity provider (including, but not limited to, application forms submitted by applicants; leases; rental payment histories; loan agreements and terms thereto; credit reports; complaints and lease violations; and other records having to do with the provision of housing) shall be preserved by the housing opportunity provider for a period of six (6) months from the date of the making of the record or the termination of a lease or loan agreement. The records of an evicted individual or an individual denied a housing opportunity shall be kept for a period of six (6) months from the date of the making of the record or the denial of the opportunity. Where a complaint of discrimination has been filed, the respondent housing opportunity provider shall preserve all housing records relevant to the complainant until final disposition of the complaint. The term "housing records relevant to the complaint," includes, but is not limited to, application or housing records relating to the complainant and to all other applicants or tenants holding or seeking opportunities similar to that held or sought by the complainant, as well as application forms or papers completed by an unsuccessful applicant or by all other applicants for the same opportunity as that for which the complainant applied and was rejected. The date of "final disposition of the complaint" means the date of the statutory period within which the complainant, the intervenor, or the Commission may bring an action in chancery or circuit court, or the date on which such litigation is terminated, whichever is later.

**Authority:** T.C.A. §§4-21-202, 4-21-303, 4-21-308, and 10-7-504. **Administrative History:** Original rule certified June 10, 1974. Amendment filed December 5, 1978; effective January 19, 1979. Amendment filed June 18, 2003; effective October 28, 2003.

#### **1500-1-.04 INVESTIGATION AND CONCILIATION.**

- (1) Investigation. After the filing of a complaint, the Executive Director or a subordinate supervisor designated by him or her shall designate an investigator from the Commission staff or from a group of approved contract investigators to investigate the complaint. The Chairman may at his or her discretion designate a Commissioner to direct the investigation as chief investigator. The designated investigator(s) shall make a prompt and thorough investigation of the allegations of the complaint.

(Rule 1500-1-.04, continued)

- (2) Production of evidence.
  - (a) An investigator may at any reasonable time request production of or access to premises, records, and documents relevant to the complaint.
  - (b) If a respondent fails to produce or fails to permit access to relevant evidence requested by the Commission, the Commission may apply to the circuit or chancery court for an order requiring the respondent to produce or to permit access to such evidence. The Commission may also, in such situations and when presented with an un rebutted prima facie charge of discrimination, issue a finding of reasonable cause to believe that a discriminatory practice has occurred.
- (3) Conference, conciliation, and persuasion.
  - (a) If the investigator determines, after preliminary investigation, that probable cause exists to substantiate the allegations of the complaint, the investigator shall report his or her recommendations to the Executive Director, who shall make a finding and report to the Commission. The investigator shall endeavor to eliminate the unlawful discriminatory practice by conference, conciliation, and persuasion. If a complaint subsequently proceeds to a hearing, no testimony shall be given or received concerning any offers or counteroffers made in an effort to conciliate any alleged unlawful discriminatory practice.
  - (b) The investigator shall notify the respondent(s) that a particular meeting or conversation is for the purpose of attempting to conciliate the complaint. These requirements shall not be construed to limit the power of the Commission to conduct further investigations in preparation for a hearing or for other purposes in connection with its statutory duties, nor shall they be construed to prohibit the use of evidence obtained through such investigations.
  - (c) The Commission staff shall attempt to conciliate a complaint from the time of filing until that complaint is dismissed, proceeds to court, or proceeds to an administrative hearing.
- (4) If, as a result of conference, conciliation, or persuasion, the investigator is able to secure voluntary compliance that eliminates any unlawful discriminatory practice, a conciliation agreement shall be prepared. The conciliation agreement shall set forth all measures to be taken by the parties, including provisions for compliance reports, and shall be signed by the respondent(s), the complainant(s), and approved by the Executive Director of the Commission.
- (5) Administrative Closure. Upon the execution of a conciliation agreement, the Commission shall administratively close the complaint, and the Executive Director shall notify the parties and the Commissioners of the terms of such disposition. Disposition of a case by conference, conciliation, or persuasion shall not, however, preclude the Commission, whenever justice so requires, from reconsidering the terms of such conciliation at any time and from taking such further action as it may deem necessary upon notice to the parties.
- (6) In all cases in which a real estate operator claims as a defense a lack of evidence of financial ability of the complainant or tester under T.C.A. Section 4-21-602(c), the Commission will investigate to see whether the requirement of financial ability is applied consistently regardless of the prospective applicant's membership in a protected class.
- (7) No exemption for familial status shall be allowed under T.C.A. Section 4-21-602(f) for dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, unless the U.S. Department of Housing and Urban Development has already determined that the state or federal program is specifically designed and operated to assist elderly persons.



(Rule 1500-1-.04, continued)

- (8) With regard to housing complaints, the Commission staff shall complete the investigation and any attempts at conciliation, and make any determination of reasonable cause to believe that discrimination took place, within 90 days of the filing of the complaint, unless such completion is impracticable. If the investigation cannot be completed within 90 days, the Commission staff shall notify the complainant(s) and the respondent(s) in writing of the reasons for not doing so.

**Authority:** T.C.A. §§4-21-202 and 4-21-303. **Administrative History:** Original rule certified June 10, 1974. Amendment filed December 5, 1978; effective January 19, 1979. Amendment filed April 30, 1997; effective August 28, 1997. Amendment filed September 7, 2000; effective January 29, 2001. Amendment filed June 18, 2003; effective October 28, 2003.

#### **1500-1-.05 COMMISSIONER'S HEARING.**

- (1) When hearing ordered:
  - (a) After a finding of reasonable cause substantiating the allegations of a complaint, and where efforts to eliminate or resolve such unlawful discriminatory practices through conference, conciliation, and persuasion have failed, the results of the investigation shall be reported to the Executive Director, who shall report those results to the Chairman, along with his or her recommendation to schedule a hearing.
  - (b) The Commission shall thereupon appoint a presiding hearing examiner and may, in its discretion, appoint additional hearing examiners. If additional hearing examiners are appointed, a simple majority of such examiners may make a recommendation to the Commission after a hearing.
- (2) Notice of hearing: Within ninety (90) days after an administrative determination of reasonable cause to believe that discrimination has taken place, the Commission shall serve on the respondent by mail or in person a written notice of hearing. The notice of hearing shall state the time, place, and nature of the hearing and the right to be represented by counsel. The notice shall also inform the respondent that he or she may file an answer to the sworn complaint. The notice shall also include:
  - (a) The statement of the legal authority on which the hearing is to be heard, including a reference to the particular sections of the statutes and rules involved;
  - (b) A short and plain statement of the matter asserted. If the Commission is unable to state the matter in detail at the time the official notice is served, the notice may be limited to a statement of the issues involved. Upon timely written application furnished by the respondent to the Commission no less than twenty (20) days prior to the date set for the hearing, the Commission shall furnish to the respondent a more definite and detailed statement of the matter asserted. Such statement shall be furnished no less than ten (10) days prior to the time set for the hearing;
  - (c) A copy of the complaint or the Commission's letter of determination; and
  - (d) A statement of the complainant's desired remedies. Such statement, however, shall in no way limit an order of the Commission issued pursuant to T.C.A. Sections 4-21-305 and 4-21-306.
- (3) Answer. All parties shall be afforded the opportunity to respond in person, by attorney, or through appropriate responsive pleadings, and to present evidence and argument on all issues involved.
- (4) Filing of answer. The respondent or the respondent's attorney may answer the complaint or amended complaint. The answer shall be in writing and signed by the respondent or the respondent's attorney.
- (5) Content. The answer shall state in short and plain terms the defense(s) to each claim asserted and shall admit or deny each allegation in the complaint. If the respondent is without knowledge or information

(Rule 1500-1-.05, continued)

sufficient to form a belief as to the truth of an allegation, the answer shall so state, and such statement shall constitute a denial. The answer shall also contain the respondent's mailing address.

- (6) Manner of filing. The answer may be filed by personal delivery, express delivery, ordinary mail, registered mail, certified mail, or electronic facsimile. Two (2) copies of the answer shall be filed not less than five (5) days before the hearing date at the Commission's Nashville office or at any other such office as the Commission may designate.
- (7) Failure to deny or admit. Failure to deny or admit an allegation in the complaint shall constitute an admission of such allegation, unless the respondent states in the answer that he or she is without knowledge or information sufficient to form a belief as to the truth of that allegation.
- (8) Defense and new matter. Any allegation of new matter contained in the answer shall be deemed denied without the necessity of a reply.
- (9) Extension of time for filing. Upon written application, the Commission may, for good cause shown, extend the time within which the answer may be filed. The Commission may delegate this authority to the presiding hearing examiner.
- (10) Amendments of answer. The answer may be amended as a matter of right at any time before the first hearing. Thereafter, an amendment may be made at the discretion of the presiding hearing examiner, upon written application. An original with two (2) copies of the amended answer shall be filed with the Commission.
- (11) Amendment of answer upon amendment of complaint. In any case where a complaint has been amended, the respondent shall have the opportunity to amend his or her answer within such period as may be fixed by the presiding hearing examiner.
- (12) Failure to file answer. Failure to file an answer within the time provided herein shall constitute a default. The hearing examiner or Commission may proceed, notwithstanding such default, to hold a hearing at the time and place specified in the notice of hearing, to make its findings of fact, and to enter its order upon the testimony taken at the hearing.
- (13) Default in Answering. Upon application, the Commission may, for good cause shown, set aside a default. The Commission may delegate this authority to the Executive Director.
- (14) Hearings.
  - (a) Whenever practicable, the complainant or the party on whose behalf the complaint was filed shall appear at the hearing with or without counsel and submit testimony. The respondent may appear at the hearing with or without counsel and, if an answer has been filed or a default in answering has been set aside for good cause shown, may examine witnesses; cross-examine witnesses; and present evidence. The complainant and any person permitted to intervene at the discretion of the presiding hearing examiner, may examine witnesses; cross-examine witnesses; and present evidence. Upon written request by the complainant, the Commission may furnish a staff attorney to present the complainant's proof at hearing.
  - (b) Hearings shall be conducted at the Commission's Nashville office or at any other such office as the presiding hearing examiner may, in his or her discretion, designate.
- (15) Who shall conduct. Hearings shall be conducted before a hearing examiner or hearing examiners to be appointed by the Commission. The Commission shall designate one such hearing examiner to act as presiding hearing examiner.

(Rule 1500-1-.05, continued)

- (16) Power and duties of the presiding hearing examiner. The presiding hearing examiner shall have full authority to control the procedure of a hearing; to admit or to exclude testimony or other evidence; and to rule upon all motions and objections. The presiding hearing examiner shall inquire into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of those issues. The presiding examiner may call and examine witnesses, direct the production of papers or documents, and introduce such papers or documents into the record of proceedings.
- (17) Procedure at hearing.
  - (a) The complainant's case shall be presented before the hearing examiner by the complainant or his or her counsel. The complainant's case may also be presented by a Commission staff attorney.
  - (b) The hearing examiner(s) shall admit and shall give probative effect to evidence admissible in a court. The hearing examiner(s) may, when necessary, ascertain facts not reasonably susceptible to proof under the rules of court, by admitting evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The hearing examiner(s) shall give effect to the rules of privilege recognized by law and shall exclude evidence that, in his or her judgment, is irrelevant, immaterial, or unduly repetitious.
  - (c) All testimony shall be given under oath or affirmation, and a written record of the proceedings shall be made and kept.
  - (d) No testimony or evidence shall be given or received at any hearing concerning any offers or counteroffers made in an effort to conciliate any alleged unlawful discriminatory practice.
  - (e) Two (2) or more related proceedings under the Act may be joined at the discretion of the Commission.
- (18) Stipulations. The parties may stipulate as to facts, in which event, such stipulations shall be filed, numbered, and used at the hearing. Such stipulations shall not preclude the offering of additional evidence by any party.
- (19) Continuation and adjournment. The hearing examiner(s) may continue a hearing from day to day, or may adjourn it to a later date or to a different place by announcement thereof at the hearing, or by appropriate notice to all parties.
- (20) Motions and objections. Motions and objections made during a hearing, including objections to the introduction of evidence, shall be stated orally or in writing and shall be included in the record of the hearing.
- (21) Oral arguments and briefs. The presiding hearing examiner shall permit the parties, their attorneys, or the Commission's staff attorneys presenting the complainant's case to argue before the hearing examiner and to file briefs within such time limits as the presiding hearing examiner may determine in his or her discretion. Arguments shall be included in the record unless excluded by the presiding hearing examiner.
- (22) Improper conduct. The presiding hearing examiner may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct before the hearing examiner(s).
- (23) Waiver of hearing. With the written consent of the respondent and notice to all parties, an order may be entered without holding a hearing or making findings of fact or conclusion of law.
- (24) Public hearings. All Commission hearings shall be open to the public.

(Rule 1500-1-.05, continued)

- (25) The record in a contested case shall include:
  - (a) All applications, pleadings, motions, intermediate rulings, exhibits, and appendices;
  - (b) Evidence received or considered, stipulations, and admissions;
  - (c) A statement of matters officially noticed;
  - (d) Questions and offers of proof, objections, and rulings thereon;
  - (e) All proposed findings or decisions and exceptions;
  - (f) All decisions, opinions, or reports by the Commission or the hearing examiner(s); and
  - (g) All staff memoranda or data submitted to the hearing examiner(s) or members of the Commission in connection with their investigation and consideration of the case.
- (26) Subpoenas.
  - (a) Issuance of subpoena. Whenever it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, payrolls, personnel records, correspondence, documents, papers, or any other evidence relating to any matter in question before the Commission, any Commissioner, Commission attorney, or the Executive Director may issue a subpoena or subpoena duces tecum and thereby compel the attendance of such witnesses or the production of such books, papers, records, and related materials.
  - (b) Issuance of subpoena at request of a party. The Commissioners, the Commission attorneys, or the Executive Director may issue a subpoena or a subpoena duces tecum at the request of any party to a hearing or other proceeding. The issuance of such subpoenas at the request of a party shall depend upon a showing of necessity.
  - (c) Fees. When a subpoena or subpoena duces tecum is applied for and issued at the request of any party to a hearing or other proceeding, the cost of service, witnesses, and mileage fees, if any, shall be borne by the requesting party. When a subpoena or subpoena duces tecum is initiated and issued by a Commissioner, a Commission attorney, or the Executive Director, the cost of such service, witnesses, and mileage fees, if any, shall be borne by the Commission.
- (27) Depositions and interrogatories:
  - (a) Depositions of witnesses, including any party, may be taken as prescribed by the Tennessee Rules of Civil Procedure and T.C.A. § 4-5-311.
  - (b) Interrogatories. The Commission may, at any time after a complaint is filed, require any party or witness to answer interrogatories. The procedure for interrogatories shall conform to the Tennessee Rules of Civil Procedure.
- (28) Refusal to make discovery. If a person fails to permit access or inspection, fails to comply with a subpoena, refuses to have his or her deposition taken, refuses to answer interrogatories, or otherwise fails or refuses to make discovery, the Commission or any party may request an order of the circuit or chancery court requiring such discovery. The presiding hearing examiner may, in his or her discretion, invoke the remedies provided for in Tennessee Rule of Civil Procedure 37.02 against a person or a party who fails to comply with an order of who refuses to make discovery.

(Rule 1500-1-.05, continued)

**Authority:** T.C.A. §§4-21-202, 4-21-304, and 4-21-309. **Administrative History:** Original rule filed December 5, 1978; effective January 19, 1979. Amendment filed April 30, 1997; effective August 28, 1997. Amendment filed September 7, 2000; effective January 29, 2001. Amendment filed June 18, 2003; effective October 28, 2003.

**1500-1-.06 COMMISSIONER'S ORDERS.**

- (1) Orders. Contents of order. An order of the Commission issued after hearing shall set forth the findings of fact and conclusions of law of the hearing examiner(s); the Commission's final decision; and, in the discretion of the Commission, an opinion containing the reasons for such decision.
- (2) Issuance of orders.
  - (a) Upon hearing all of the evidence, the hearing examiner(s) shall make a proposed, or initial, order in writing, which shall include findings of fact and conclusions of law.
  - (b) Proposed or initial orders shall be served on all parties of record, and each party who would be adversely affected by the proposed or initial decisions may request an opportunity to file exceptions and present argument to the Commission itself. In reviewing a proposed or initial order, the Commission may, in its discretion, determine to review some but not all excepted issues, or may determine not to exercise any review. The Commission may also delegate its authority to review a proposed or initial order to one (1) or more persons or individual Commissioners, subject to further review by the Commission.
  - (c) All exceptions shall be filed with the Commission within fifteen (15) days of the issuance of the proposed or initial order. A proposed order not excepted to within fifteen (15) days of its issuance will become a final order of the Commission.
  - (d) Where exceptions or arguments are permitted, the Commission shall, before entering a final order on the matter, consider the entire record, or such portion(s) thereof as may be cited by the parties, and shall, within sixty (60) days thereafter, make an order in the form and manner described by T.C.A. 4-5-314 and T.C.A. 4-5-315.
  - (e) The proposed findings of fact and conclusions of law issued by the hearing examiner(s) shall be conclusive unless clearly erroneous in view of the probative and substantial evidence on the whole record.
  - (f) Based upon the Commission's final determination that a respondent has engaged in an unlawful discriminatory practice, the Commission may issue and cause to be delivered to the respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action as, in the judgment of the Commission, will carry out the purpose of the Tennessee Human Rights Act. Affirmative Action orders may include the remedies enumerated in Tennessee Code Annotated, Title 4, Chapter 21. Such orders may also consider the number of prior complaints filed against the respondent, as well as any prior unlawful discriminatory practices engaged in by the respondent and as determined by the Commission.
  - (g) Based upon the Commission's final determination that a respondent has not engaged in a discriminatory practice, the Commission shall state its finding of fact and conclusions of law and shall issue an order dismissing the complaint. A copy of the order shall be delivered to the complainant, the respondent, and such public officers and persons as the Commission deems proper.
- (3) Filing. All orders issued by the hearing examiner(s) or the Commission after a hearing shall be filed at the Commission's office in Nashville.

(Rule 1500-1-.06, continued)

- (4) Any order of the Commission awarding damages for humiliation and embarrassment pursuant to T.C.A. §4-21-306(a)(7) shall be predicated upon a finding of harm resulting from circumstances damaging the complainant's dignity and self respect. The amount of such an award is subject to the rule of reasonableness, and necessarily depends on the articulation of personal shame experienced by the complainant together with the Commission's perception of the complainant's sensitivities. The Commission may also make such an award pursuant to Tennessee case law interpreting "damages for humiliation and embarrassment" for purposes of the Tennessee Human Rights Act.

**Authority:** T.C.A. §§4-21-202, 4-21-305, and 4-5-315. **Administrative History:** Original rule filed December 5, 1978, effective January 19, 1979. Amendment filed June 18, 2003; effective October 28, 2003.

#### **1500-1-.07 PETITION TO REHEAR.**

- (1) Reopening of proceedings. After a hearing and the issuance of a final order, any party aggrieved by the final order and desiring to have the order modified or set aside may, within fifteen (15) days after entry of that order, file a written petition for rehearing. The petition shall specify in detail the grounds for the relief sought and the authorities and support therefore.
- (2) The filing of a petition for rehearing shall not extend, modify, suspend, or delay the effective date of the final order. The order shall take effect on the date fixed by the Commission and shall continue in effect unless and until the petition is granted or until the order is suspended, modified, or set aside in a manner provided by law.
- (3) Grounds for rehearing. The Commission may only grant a petition for rehearing on the following grounds:
  - (a) A material error of law;
  - (b) A material error of fact sufficiently strong enough to reverse or modify the order; or
  - (c) The discovery of new evidence sufficiently strong enough to reverse or modify the order and which could not have been previously discovered through due diligence.
- (4) Procedures for rehearing:
  - (a) Copies of petitions for rehearing shall be served on all parties of record. All parties of record may file a reply to a petition for rehearing.
  - (b) The Commission shall dispose of a petition for rehearing within thirty (30) days after the filing thereof. The Commission may, in its discretion, grant a petition for rehearing or enter an order with reference to the petition without a hearing. If the Commission fails to enter an order or dispose of the petition within the thirty (30) day period, the petition shall be deemed to have been denied at the expiration of that thirty (30) day period.
  - (c) Upon granting a petition for rehearing, the Commission shall set the matter for rehearing as soon as practicable. In disposing of matters on rehearing, the Commission shall have all the powers of and shall follow the procedures of the Davidson County Chancery Court regarding such dispositions, except as otherwise provided in Section 4-5-321 of the Tennessee Code Annotated.

**Authority:** T.C.A. §4-21-202. **Administrative History:** Original rule filed December 5, 1978; effective January 19, 1979. Amendment filed June 18, 2003; effective October 28, 2003.

**1500-1-.08 JUDICIAL REVIEW.**

- (1) Who may apply. A complainant, respondent, or intervenor aggrieved by an order of the Commission, including an order dismissing a complaint or stating the terms of a conciliation agreement, may obtain judicial review of the order. The Commission may obtain a judicial order for the enforcement of any order issued by the Commission.
- (2) Forum. A proceeding for judicial review or enforcement may be brought in the chancery or circuit court in
  - (a) The county in which the alleged unlawful practice, which is the subject of the order or complaint, has occurred; or
  - (b) In any county in which a respondent resides or transacts business.
- (3) Initiation of Proceedings. The proceedings shall be initiated by filing a petition in the appropriate court. All parties shall follow the procedures as outlined in Tennessee Code Annotated Section 4-21-307.
- (4) Upon receipt of a copy of the petition for review, the Commission shall, within thirty (30) days, cause to be certified and delivered to the clerk of the court the entire record made before the Commission, together with the findings of fact, conclusions of law, and the orders of the Commission thereon. The record for review shall include all items delineated by Section 1500-1-.05(25) of these rules.
- (5) The Commission's copy of the record shall be available, during regular business hours at the Commission's Nashville office, to all parties for examination without cost. The Commission's copy of the record shall be reproduced for parties at a cost to be determined by the Commission. The Commission's copy of the record shall also be available to intervenors and other persons for such purposes, to such extents, and at such costs as the Commission or the Chairman may, in their discretion, determine.
- (6) Certification. The Chairman, the Secretary of the Commission, or the Executive Director is authorized and empowered to certify all documents or records which are a part of the files and records of the Commission.
- (7) Any injunctive relief sought under T.C.A. Section 4-21-303(g), and any civil action brought under T.C.A. Section 4-21-312, shall be commenced on behalf of the complainant.

**Authority:** T.C.A. §§4-21-202 and 4-21-307. **Administrative History:** Original rule filed December 5, 1978; effective January 19, 1979. Amendment filed April 30, 1997; effective August 28, 1997. Amendment filed June 18, 2003; effective October 28, 2003.

**1500-1-.09 CONSTRUCTION AND AMENDMENT OF COMMISSION RULES.**

- (1) Availability of rules. The rules and regulations of the Commission and any amendments, additions, or modifications thereof, shall be available to the public at any office of the Commission and at the office of the Tennessee Secretary of State.
- (2) Construction of rules and pleadings.
  - (a) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of Tennessee Code Annotated, Title 4, Chapter 21, and the policies of the Tennessee Human Rights Commission.
  - (b) All pleadings shall be liberally construed with a view to effect justice between the parties.

(Rule 1500-1-.09, continued)

- (3) Amendment of Rules. New rules may be adopted and any rule may be amended or rescinded by the Commission at a regular or special meeting, provided that notice of the proposed adoption, amendment, or rescission has been given in writing to all members of the Commission at least ten (10) days before the meeting at which action is to be taken. Such ten (10) days notice shall not be required when two-thirds of the membership of the Commission shall approve in writing any such adoption, amendment, or rescission. All such amendments and the process for amending Commission rules shall comply with Tennessee statutes governing the amendment of Tennessee Administrative Regulations, Tennessee Code Annotated, Title 4, Chapter 5.

**Authority:** T.C.A. §4-21-202. **Administrative History:** Original rule filed December 5, 1978; effective January 19, 1979. Amendment filed June 18, 2003; effective October 28, 2003.

#### **1500-1-.10 GUIDELINES FOR ADVERTISEMENT.**

- (1) It shall be a violation of Tennessee Code Annotated, Title 4, Chapter 21, for any employer, labor organization, or employment agency to cause to be published, printed, circulated, or displayed any advertisement or notice relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, licensing opportunities, or any of the terms, conditions, or privileges thereof, which is segregated on the basis of race, color, religion, national origin, or sex, or under any column heading which overtly, subtly, directly, or indirectly expresses any such limitation, specification, discrimination, or preference.
- (2) It shall be a violation of Tennessee Code Annotated, Title 4, Chapter 21, for an employer, labor organization, or employment agency to cause to be published, printed, circulated, or displayed any advertisement or notice relating to employment, employment opportunities, or any of the terms, conditions, or privileges thereof, the language of which expresses any limitation, specification, discrimination, or preference as to race, color, religion, national origin, or sex. A limitation, specification, discrimination, or preference as to religion, national origin or sex is not a violation where such limitation, specification, discrimination or preference is a “bona-fide occupational qualification” for the particular job advertised, as defined below in subparagraph (4).
- (3) Whenever a “help wanted” advertisement or notice is to contain any job title or job description which is not clearly neutral in terms of sex and the job advertised is not one for which sex is a bona-fide occupational “qualification” as defined in this regulation, the advertisement or notice should instead utilize a gender neutral job title. Such advertisements or notices may alternatively utilize the job title that is the counterpart of the non-neutral job title or the designation “M/W.” Newspapers that print employment advertisements are encouraged to voluntarily note in their employment advertising pages that the abbreviation “M/W” means “men or women.”
- (4) For the purpose of this regulation, “bona-fide occupational qualification” shall include only those vocational qualifications that are reasonably necessary to the normal operation of the particular business, enterprise, or apprentice or other training program. This exception shall be interpreted so that individuals will be considered for employment on the basis of their individual capacities, and not on the basis of any characteristic(s) generally attributable to their group. The employer, labor organization, or employment agency has the burden of establishing with the Tennessee Human Rights Commission that religion, national origin, or sex is a bona-fide occupational qualification.
- (5) The application of the bona-fide occupational qualification exception is not warranted when based on: assumptions of the comparative general employment characteristics of persons of a particular religion, national origin, or sex, such as their turnover rate; stereotypical characteristics of the aforementioned classes, such as their mechanical ability or aggressiveness; customer, client, coworker, or employer preference; historical usage, tradition, or custom; or the necessity of providing separate facilities of a personal nature, such as rest rooms or dressing rooms. The above list is provided for purposes of example, and is not exhaustive or all-inclusive. In regard to sex, the application of the exception may



(Rule 1500-1-.10, continued)

be authorized by the Tennessee Human Rights Commission where it is necessary for authenticity or genuineness, such as for an actor or actress, or for fitters of intimate apparel.

- (6) Any employer, labor organization, or employment agency may make an inquiry of the Tennessee Human Rights Commission at its office in Nashville as to whether religion, national origin, or sex is a bona-fide occupational qualification for a particular job advertisement or notice that it intends to cause to be published, printed, circulated or displayed. The Tennessee Human Rights Commission shall, within five (5) working days, give opinions in response to such inquiries. An opinion rendered by the Commission prior to the publication or display of any advertisement in response to such an inquiry shall be binding on the Commission for the purpose of this regulation, except in those instances in which the inquiry has not fully and accurately disclosed the relevant facts regarding the particular job in question. The Commission shall maintain records of each inquiry made pursuant to this section, including the name, title, and address of the inquirer, a summary of the job and job duties, the basis for the exception claimed, and the time, date, identification number, and disposition of the inquiry.
- (7) Newspapers and other publications which print employment advertisements are encouraged to maintain lists of discriminatory terms and permissible substitutes and to instruct their employees to advise employers, labor organizations, or employment agencies of these terms and to have copies of these regulations available for distribution to advertisers upon request.
- (8) The use of language including, but not limited to, “black”, “negro”, “colored”, “white”, “restricted”, “interracial”, “segregated”, “Christian”, “Jewish”, “men”, “women”, or any other word, term, phrase, or expression which tends to influence, persuade, dissuade, encourage, discourage, attract, or repel any person or persons because of their race, color, religion, national origin, or sex shall be considered a discriminatory practice in violation of Tennessee Code Annotated, Title 4, Chapter 21.
- (9) Nothing contained in this regulation shall be deemed to prohibit the Commission from including in any of its orders against any respondent employer, labor organization, or employment agency a provision requiring such respondent to include in any advertisement or notice regarding any employment or licensing opportunity the term “equal opportunity”, or any substantially similar term, in any notice or advertisement.

**Authority:** T.C.A. §4-21-202. **Administrative History:** Original rule filed December 5, 1978; effective January 19, 1979. Amendment filed June 18, 2003; effective October 28, 2003.

#### **1500-1-.11 INCORPORATION OF FEDERAL GUIDELINES AND REGULATIONS.**

- (1) The guidelines on religious discrimination promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulation Part 1605, are adopted, as hereinafter amended, and are incorporated by reference.
- (2) The guidelines on sex discrimination promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1604, are adopted, as hereinafter amended, and are incorporated by reference.
- (3) The guidelines on employment testing issued by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1607, are adopted, as hereinafter amended, and are incorporated by reference.
- (4) The regulations on discriminatory housing advertisements issued by the United States Department of Housing and Urban Development, which appear in 24 Code of Federal Regulations Part 100.75, are adopted, as hereinafter amended, and are incorporated by reference.

(Rule 1500-1-.11, continued)

- (5) Any federal guideline or regulation adopted and incorporated under this part that is inconsistent with the Tennessee Human Rights Act, or any regulation promulgated thereunder, shall be superseded by the Tennessee Human Rights Act or the appropriate regulation promulgated thereunder.

**Authority:** *T.C.A. §4-21-202. Administrative History: Original rule filed December 5, 1978; effective January 19, 1979. Amendment filed June 18, 2003; effective October 28, 2003.*